

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

LINDA RAIHA,

Charging Party,

-v-

BUTTE-SILVER BOW LOCAL
GOVERNMENT,

Respondent.

Case No.: 0061011911

**ORDER AFFIRMING IN PART AND
REJECTING AND MODIFYING IN
PART AND REMANDING TO THE
HEARINGS BUREAU FOR
FURTHER PROCEEDINGS**

Linda Raiha (Raiha) filed a complaint with the Department of Labor and Industry asserting that Butte-Silver Bow Local Government (Butte-Silver Bow) unlawfully discriminated against her based on her age and retaliated against her. The Hearings Bureau (Bureau) held a contested case hearing pursuant to § 49-2-505, MCA. Following the hearing, the Bureau issued a decision that determined Butte-Silver Bow did not discriminate or retaliate against Raiha. Raiha filed an appeal with the Montana Human Rights Commission (Commission). Butte-Silver Bow filed a cross appeal. The Commission considered the matter on January 10, 2008. Geralyn Driscoll appeared and argued on behalf of Raiha. Thomas M. Welsh appeared and argued on behalf of Butte-Silver Bow.

As a threshold matter, Butte-Silver Bow argues in its cross appeal that Raiha's case should be dismissed in its entirety because the hearing officer erred as a matter of

law when he concluded that Raiha's complaint was timely filed under § 49-2-501, MCA. Butte-Silver Bow asserts Raiha's filing deadline was not extended to 300 days by the grievance filed on Raiha's behalf by MEA-MFT because that grievance did not specifically allege age discrimination. Raiha asserts the hearing officer correctly determined she timely filed within 300 days.

After careful and due consideration, the Commission concludes the Bureau's conclusion of law on the timeliness of Raiha's filing is correct under § 49-2-501, MCA, because the union grievance was initiated to resolve the dispute underlying Raiha's complaint that she was not hired for the assistant city court clerk position. The Commission affirms the Bureau's conclusion on this issue and hereby adopts that portion of the hearing officer's decision in its entirety.

As to Raiha's appeal, she asserts among other things, that the hearing officer's findings of fact regarding pretext are clearly erroneous and that the corresponding conclusions of law are in error because the reasons Butte-Silver Bow gave for not hiring her did not comply with its personnel policies or its collective bargaining agreement. Butte-Silver Bow asserts the hearing officer's findings of fact and corresponding conclusions of law are correct because it had legitimate reasons not to hire Raiha.

After careful and due consideration, the Commission concludes the hearing officer erred regarding pretext in this matter. Specifically, the Commission finds that Raiha proved pretext by a preponderance of the evidence because she was not properly given the reasons for the failure to hire her as required by Art. 8, Section 3 of the collective bargaining agreement and because she was not evaluated as required by the personnel policies developed pursuant to § 49-3-201, MCA. Accordingly, the Commission rejects the Bureau's decision on pretext and modifies the decision by

concluding that Butte-Silver Bow discriminated against Raiha on basis of age. The Commission hereby remands this case to the Bureau for a determination of damages.

DATED this ____ day of March, 2008.

Ryan Rusche, Chair
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned employee of the Human Rights Bureau certifies that a true copy of the forgoing Human Rights Commission ORDER was served on the following persons by U.S. mail, postage prepaid, on March ____, 2008.

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